

Briefing paper – Regulation text and Discussion

Provided in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, § 11122.5.)

§ 1314 – Absence of an Appointed Arbitrator

In the absence of an appointed Arbitrator, the Office of Administrative Hearings may decide, with consent of the Petitioner and Respondent, procedural and discovery questions as necessary to avoid delay in the expeditious completion of the Arbitration proceedings.

For discussion: Whether there is statutory authority under Public Contract Code § 10245.4 or another code section to allow OAH to decide procedural and discovery questions.

§ 1332 – Appointment of Special Arbitrator

Proposed regulation change (as agreed to by Committee):

(a) If prior to Arbitrator appointment pursuant to Article 3 of these regulations, an objection is filed pursuant to Section 1356, or a dispute arises regarding acceptance of the work, exhaustion of administrative remedies, or default of Arbitration, the Office of Administrative Hearings shall, upon written motion of the Petitioner or Respondent, cause a Special Arbitrator to be appointed for the sole purpose of resolving that objection or dispute. The written motion or objection shall be accompanied by a non-refundable filing fee established by and payable to the Office of Administrative Hearings.

An opposition or a response to a motion filed pursuant to this section, shall be filed within 20 calendar days of service of the objection or motion and shall be accompanied by a non-refundable filing fee established by and payable to the Office of Administrative Hearings. Any replies to an opposition or response shall be filed with the Office of Administrative Hearings within five business days.

Failure to timely file a response with the Office of Administrative Hearings is a waiver of the right to object, and the Special Arbitrator shall rule upon the motion.

(b) The Special Arbitrator shall be selected by the Office of Administrative Hearings on a random basis, or by agreement of the Parties, for each objection or dispute arising pursuant to this section.

(c) The Special Arbitrator shall be appointed for the one dispute, and shall not be appointed to any other disputes in the Arbitration or be appointed as the Arbitrator to

decide the primary case. This provision may be waived upon written agreement between the Petitioner and the Respondent.

(d) The Office of Administrative Hearings shall advise the Parties of the selected Special Arbitrator. The Petitioner and Respondent are limited to one peremptory challenge each of a Special Arbitrator. Upon receipt of notice of the selected Special Arbitrator, Petitioner and Respondent shall have five business days to use their peremptory challenge. The Special Arbitrator shall recuse himself or herself if there is an actual or potential conflict of interest. In the event a Special Arbitrator recuses himself or herself, or if a Petitioner or Respondent exercises a peremptory challenge, the Office of Administrative Hearings shall select another Special Arbitrator pursuant to subdivision (b) above.

(e) The Special Arbitrator appointed under this section shall provide a written decision on only the issue in dispute.

For discussion: Whether the revisions should include a provision for appointment of a special arbitrator to decide procedural and discovery questions prior to arbitrator appointment.

§ 1310 Exercise of Administrative Authority

(a) The Office of Administrative Hearings shall provide all administrative services for Arbitrations under this subchapter except that, unless otherwise agreed to by the Parties and the Office of Administrative Hearings, such services shall not include the services of reporters or transcribers or personnel of the Office of Administrative Hearings as Arbitrators.

(b) The services of the Arbitrator shall be provided by a contract or contracts between the Office of Administrative Hearings, and the person or persons selected to be the Arbitrator under applicable law, these rules, and as consented to by the Parties. Such agreement shall conform to State law, policies and procedures for the employment of expert or personal services. The Office of Administrative Hearings shall compensate the Arbitrator directly.

(c) The Office of Administrative Hearings shall be the repository of the official file for any proceeding under these rules until expiration of the period for an appeal, and may thereafter dispose of any such file, subject to Government Code Section 14755.

For discussion: Replacing the word “employment” in § 1310, subdivision (b) to reflect that Arbitrators are not employees, but contractors.

§ 1334 Lack of Prosecution

(a) The Arbitrator shall have discretion to dismiss any complaint where the Petitioner or cross-complainant fails to prosecute the matter by failing to perform discovery or otherwise fails to take any significant action to move the case to hearing for a period of 18 consecutive months, measured from the filing of the complaint or the last significant action.

(b) The Arbitrator shall dismiss any complaint where the Petitioner cross-complainant fails to prosecute the matter by failing to perform discovery or otherwise fails to take any significant action to move the case to hearing for a period of 36 consecutive months, measured from the filing of the complaint or the last significant action.

(c) For purposes of this section "significant action" means an action, which is timely served and filed by the Petitioner or Cross-complainant pursuant to Section 1305, and which is designed to move a complaint to hearing. It shall include good-faith requests for discover good-faith motions to eliminate issues and pre-hearing briefs requested by the Arbitrator.

(d) The Arbitrator shall dismiss a complaint if the hearing has not commenced within five years after the filing of the complaint.

(e) If an Arbitrator has not been selected or is absent due to resignation, death or disability, the Office of Administrative Hearings shall have authority to dismiss the complaint as specified in (b) or (d).

For discussion: Replacing “18 consecutive months” with “12 consecutive months” in subdivision (a); replacing “36 consecutive months” with “24 consecutive months” in subdivision (b).